

ORDINANCE NO. 198-19**AN ORDINANCE TO AMEND TITLE 18 OF THE MUNICIPAL CODE OF THE CITY OF UNION CITY, TENNESSEE, BY ADDING CHAPTER 7 ENTITLED "STORMWATER UTILITY ORDINANCE"**

WHEREAS, The Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities, such as the city, to implement stormwater management programs within prescribed time frames, and the Environmental Protection Agency, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et seq., has published rules for stormwater outfall permits;

WHEREAS, Tennessee Code Annotated, § 68-221-1101, provides that the purpose of the stormwater management statute is to facilitate municipal compliance with the Water Quality Act of 1977, and applicable EPA regulations, particularly those arising from § 405 of the Water Quality Act of 1987, and §402(p) of the Clean Water Act of 1977, and to enable municipalities to regulate stormwater discharges, establish a system of drainage facilities, construct and operate a system of stormwater management and flood control facilities, and to "fix and require payment of fees for the privilege of discharging stormwater."

WHEREAS, Tennessee Code Annotated, §68-221-1105, provides that among other powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:

(1) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;

(2) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;

(3) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;

(4) Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;

(5) Issue permits for stormwater discharges, and for the construction, alteration, extension, or repair of stormwater facilities;

(6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;

(7) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated;

(8) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private; and

WHEREAS, Tennessee Code Annotated §68-221-1107 authorizes Tennessee municipalities to establish a reasonable, graduated stormwater fee to fund the construction, operation, and maintenance of stormwater or flood control facilities;

WHEREAS, the City desires to develop a stormwater utility to be responsible for the operation, construction and maintenance of stormwater facilities; for stormwater system planning, and for review of stormwater development plans for compliance with stormwater management codes.

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council Members of the City of Union City, Tennessee, that:

ORDB008

SECTION 1: Title 18 of the Municipal Code of the City of Union City is hereby amended by adding the following:

CHAPTER 7

STORMWATER UTILITY ORDINANCE

SECTION

- 18-701 General Provisions.
 - 18-702 Creation of Stormwater Utility.
 - 18-703 Jurisdiction.
 - 18-704 Definitions.
 - 18-705 Funding of Stormwater Management Program.
 - 18-706 Stormwater Utility management Fund.
 - 18-707 Operating Budget.
 - 18-708 Stormwater User Fee Established.
 - 18-709 Equivalent Residential Unit (ERU).
 - 18-710 Property Classification for Stormwater User Fees.
 - 18-711 Base Rate.
 - 18-712 Adjustments to Stormwater User Fees.
 - 18-713 Billing Procedures and Penalties for Late payment.
 - 18-714 Appeal of Fees.
- Appendix A

18-701. General Provisions.

(1) Introduction.

- a. This ordinance is to:
 - i. Be known as the “Stormwater Utility Ordinance” for the City of Union City, Tennessee;
 - ii. Enable the City to comply with the National Pollution Discharge Elimination System Permit (NPDES) and applicable regulations, 40 CFR 122.26 for Stormwater Discharges;
- b. The City of Union City finds, determines, and declares that the stormwater system, which provides for the collection, treatment, storage and disposal of stormwater, provides benefits and services to all property within the incorporated City of Union City limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of stormwater, the reductions of hazards to property and life resulting from stormwater runoff, improvements in general health and welfare through reduction of undesirable stormwater conditions, and improvements to water quality in the stormwater and surface water system and its receiving waters of the state all of which are managed by the stormwater coordinator as part of the Municipal Separate Storm Sewer System (MS4) Program.
- c. The objective of this ordinance is to promote the public health, safety and general welfare of the City of Union City, Tennessee (“City”) and its citizens in compliance with the Federal Clean Water Act, 33 U.S.C. 1251 et seq., and Tennessee Code Annotated, § 68-221-1101 et seq. which require municipalities to implement stormwater management programs within prescribed time frames; to regulate stormwater discharges to protect water quality; establish adequate systems of collection, conveyance, detention, treatment and release of stormwater; reduce hazards of property and life resulting from stormwater runoff; and enable municipalities to fix and require payment of user fees for the privilege of discharging stormwater.
- d. It is further determined and declared that charges shall be established for each parcel of developed property containing utility services located within the municipal limits of the city as provided hereinafter to provide for dedicated funding sources for the administration of stormwater management programs and/or stormwater system of the city. The proceeds of user fees so derived shall be used for the purposes of planning, operation, maintenance, repair, replacement and debt service of the city’s

stormwater management programs and system necessary to protect the health, safety, and welfare of the public.

18-702. Creation of Stormwater Utility.

(1) There is created a stormwater utility. The stormwater utility shall operate with the intent to provide stormwater management for the City of Union City. Duties and activities will include:

- a. Administer and enforce the City of Union City's stormwater management ordinance, Chapter 5 of Title 18 of the Union City Municipal Code;
- b. Administer, plan, and implement stormwater projects to protect, maintain, and enhance the environment of the City of Union City;
- c. Implement activities necessary to maintain compliance with the city's MS4 National Pollutant Discharge Elimination System (NPDES) Permit and applicable regulations, 40 CFR Section 122.26 for stormwater discharges;
- d. Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, civil penalties, and other revenues of the utility; and,
- e. Advise the mayor and city council, city manager, and other City of Union City departments on matters relating to the Stormwater Utility.

(2) The planning & codes director or designee, shall administer the provisions of this stormwater utility ordinance.

18-703. Jurisdiction.

The stormwater utility ordinance shall govern all properties within the incorporated limits of the City of Union City, Tennessee.

18-704. Definitions.

For the purpose of this Title, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- (1) "Agricultural Land" means property which is zoned agricultural and/or property which yields an annual minimum, or in which the annual minimum has been met in two of the last five years, of \$1,000.00 of agricultural products produced and/or sold from the operation of the property. Agricultural production shall include agricultural, forest, and/or livestock production as defined by the United States Department of Agriculture, Natural Resources Conservation Service, and Environmental Quality Incentive Program. Proof of agricultural producer status may include IRS form 1040 Schedule F or other accounting records certified by a tax preparer.
- (2) "Base Rate" means the stormwater user fee for a single family residential property in the City of Union City.
- (3) "City" means the City of Union City, Tennessee.
- (4) "City Planning & Codes Director" refers to the City of Union City's planning & codes director who has the authority to delegate duties and responsibilities to designated city staff, which includes, but is not limited to, the planning & codes department, the stormwater coordinator or any stormwater employees hired by the City of Union City.
- (5) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; the engineering, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of stormwater facilities; and the inspection and supervision of the construction of stormwater facilities.
- (6) "Customer of Record" means the responsible party listed as a utility customer in the City of Union City's data base.

- (7) "Developed Property" means developed property which has been altered from its natural state by the creation or addition of buildings, structures, pavement or other impervious surfaces, or by the alteration of the property that results in a meaningful change in the hydrology of the property during and following rainfall events.
- (8) "Equivalent Residential Unit (ERU)" means the average square footage of a detached single family residential property. An ERU is the standard value for which other developed properties are compared to the average single family residential property.
- (9) "Exempt Property" means all public right-of-ways, public streets and public roads, public alleys, public sidewalks and public greenways, public parks, cemeteries, public drainage facilities, privately owned residential streets, property that does not discharge stormwater runoff to the stormwater or flood control facilities, agricultural land in the municipality upon which the owner and/or operator conducts activities that enable the owner and/or operator to satisfy the requirements of a qualified farmer or nurseryman under Tennessee law, and railroad right-of-way properties within the City of Union City. For purposes of this definition, "public" shall mean that which is maintained by or is or is to be dedicated to the City of Union City and/or the State of Tennessee or the government of the United States.
- (10) "Fee", "Stormwater User Fee", or "User Fee" means the monthly charge established by ordinance and levied on the users of developed parcels with utilities to fund the cost of stormwater management and of operating, maintaining, and improving the Stormwater system in the City.
- (11) "Fiscal Year" means July 1 of a calendar year to June 30 of the next calendar year, both inclusive.
- (12) "Impervious Surface" means a surface which compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or any other surface which impedes the natural infiltration of surface water.
- (13) "Impervious Surface Area" means the number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements shall be made between exterior limits of the structure, foundations, columns or other means of support or enclosure.
- (14) "City Manager" means the City of Union City's city manager or his or her designee who is designated to supervise the operation of the Stormwater management programs.
- (15) "Multifamily Residential Property" means a residential structure located on a parcel that is designed with five or more dwelling units which accommodate five or more families or groups of individuals living separately and not sharing the same living space.
- (16) "Other Developed Property" means all developed property within the municipal limits of the city other than:
 - (a) Single Family Residential property;
 - (b) Exempt property; or
 - (c) Vacant/Undeveloped property.

Other developed property shall include commercial properties, industrial properties, multifamily residential property, apartments, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices, churches, federal, state and local government properties and multi-use properties. Such property shall also include single family dwellings which are attached to or otherwise a part of a building housing a commercial enterprise. Any single family residential structure which contains more than four attached dwelling units are specifically included in this definition.

- (17) "Parkland" / "Cemetery" means all real property owned by federal, state and/or local governments that has been designated by such governmental entity for use as a public park or cemetery.
- (18) "Person" means any and all persons, natural or artificial, including any individual, firm or association, and any municipal or private corporation, partnership, or limited liability company organized or existing under the laws of this or any other state or country.
- (19) "Property Owner" means the property owner of record as listed in the city's and/or county's tax assessment roll. A property owner includes any individual, corporation, firm, partnership, limited liability company, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
- (20) "Residential Property" means single family residential property and multifamily residential property.
- (21) "Single Family Residential Property" means a developed property which serves the primary purpose of providing a permanent dwelling unit to a single family. A single family detached dwelling, a townhouse, an accessory apartment or second dwelling unit, a condominium, a duplex, a triplex, a quadruplex, a villa, or a garden home is included in this definition. A single family dwelling which is attached to, or otherwise a part of, a building housing a commercial enterprise is not included in this definition.
- (22) "Stormwater" or "Storm Water" refers to stormwater runoff, snow melt runoff, surface runoff, infiltration, and drainage.
- (23) "Stormwater Management" means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.
- (24) "Stormwater Coordinator" refers to the City of Union City stormwater coordinator who develops, coordinates, and maintains the city's stormwater program. The stormwater coordinator shall report directly to the city manager, to the City of Union City's planning & codes director and to the stormwater program manager.
- (25) "Stormwater Management Fund" or "Fund" or means the fund created by this ordinance to operate, maintain, and improve the city's stormwater management system in compliance with the most recent National Pollutant Discharge Elimination System statewide general permit.
- (26) "Stormwater Management Program" means any program or regulation mandated by the Tennessee Department of Environmental Conservation, Environmental Protection Agency, or the City of Union City for the purpose of managing stormwater discharges to protect water quality.
- (27) "Stormwater System" or "System" means all stormwater facilities, stormwater drainage systems and all improvements thereto which operate to, among other things, control discharges and flows necessitated by rainfall events; and incorporate methods to collect, convey, store, absorb, inhibit, treat, prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.
- (28) "Stormwater Utility" means a management structure that is responsible solely and specifically for the stormwater management program and system.
- (29) "Surface Water" means a water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, ponds, wetlands, marshes and sinkholes.
- (30) "User" refers to the owner or utility customer of record of property subject to the stormwater user fee imposed by this ordinance.

- (31) “Vacant or Undeveloped Property” means property on which there is no structure for which a certificate of occupancy has been issued or a property that has not been developed.

18-705. Funding of Stormwater Management Program.

Funding for the stormwater utility’s activities may include, but not be limited to, the following:

- (1) Stormwater user fees.
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the city’s stormwater ordinance.
- (3) Stormwater permit and inspection fees.
- (4) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, title 9, chapter 21).

18-706. Stormwater Utility Management Fund.

All revenues generated by or on behalf of the stormwater utility shall be deposited in a stormwater utility management fund and used exclusively to fulfill the purposes of the stormwater utility.

18-707. Operating Budget.

The Mayor and the City Council shall adopt, based on a recommendation from the City Manager, City Planning & Codes Director, and Stormwater Coordinator, an operating budget for the stormwater management program each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance.

18-708. Stormwater User Fee Established.

There shall be imposed on each and every developed property with utilities in the City of Union City, a stormwater user fee, which will be charged monthly, which shall be set from time to time in the manner and amount prescribed by this ordinance. Prior to establishing or amending the stormwater user fees, the City of Union City shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the City of Union City at least (30) thirty days in advance of a council meeting which shall consider the adoption of the user fee or its amendment.

18-709. Equivalent Residential Unit (ERU).

There is established for purposes of calculating the stormwater user fee, the equivalent residential unit (ERU). The ERU is the average square footage of a detached single family residential property in Union City. The ERU shall be established by the Mayor and the City Council by ordinance. In establishing the ERU, the Mayor and City Council shall have the discretion to determine the source of the data from which the ERU is established, taking into consideration the general acceptance and use of such source on the part of other stormwater systems, and the reliability and general accuracy of the source. The stormwater program manager or his or her designee shall determine the impervious surface areas of other developed property through property tax rolls or site examination, mapping information, aerial photographs, and other reliable information. The ERU is hereby established at 2041 square feet of impervious surface area.

18-710. Property Classification for Stormwater User Fees.

- (1) Property classifications. For purposes of determining the stormwater user fee, all properties in the City of Union City are classified into one of the following categories:
 - (a) Single family residential property;
The Mayor and City Council finds that the intensity of development of most parcels of real property in the City of Union City classified as single family residential property is less than the average intensity of development for other developed properties and similar to each other and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the impervious surface on each parcel. Therefore, all single family residential properties in the City of Union City shall be charged a monthly stormwater user fee equal to the base rate regardless of the size of the parcel or the impervious surface area of the improvements.
 - (b) Other developed property;
The monthly stormwater user fee for other developed property (i.e., non-single family residential property) shall be the base rate multiplied by a numerical factor obtained by dividing the amount of impervious surface area in square feet by 1

ERU times the correction factor, if applicable. (See Appendix "A") However, the user fee for other developed property in no event shall be less than the base rate.

(c) **Vacant/undeveloped property;**

There shall be no stormwater user fee for vacant/undeveloped property or as otherwise provided by state law.

(d) **Exempt property;**

There shall be no stormwater user fee for exempt property or as otherwise provided by state law.

18-711. Base Rate.

The Mayor and City Council shall, by ordinance, establish the base rate for the stormwater user fee. The base rate shall be calculated to insure adequate revenues to fund the costs of stormwater management and to provide for improvements to the stormwater system in the City. The base rate to be charged for each ERU is hereby established to be \$2.50 per month.

18-712. Adjustments to Stormwater User Fees (correction factor).

The stormwater coordinator shall have the right on his/her own initiative to adjust upward or downward the stormwater water user fees with respect to any property, based on the approximate percentage of any significant variation in the volume or rate of stormwater, or any significant variation in the quality of stormwater, emanating from the property, compared to other similar properties. In making determinations of the similarity of property, the stormwater utility shall take into consideration the location, geography, size, use, impervious area, stormwater facilities on the property, and any other factors that have a bearing in variation.

18-713. Utility Billing Procedures and Penalties for Late Payment.

The stormwater user fee shall be billed and collected monthly with the monthly utility bill for all developed properties within the corporate limits. The stormwater user fee for those properties using the city utilities shall be part of the statement for utility customers, and shall be paid by a single payment to the utility customer's water utility.

All bills for the stormwater user fee shall become due and payable in accordance with the rules and regulations of the applicable utilities department pertaining to the collection of the stormwater user fees. Nonpayment may result in canceling or shutting off all utilities utilized.

Mandatory statement. Pursuant to Tennessee Code Annotated § 68-221-1112, each bill that shall contain Stormwater user fees shall contain the following statement in bold: "THE STORMWATER USER FEE HAS BEEN MANDATED BY CONGRESS". The City of Union City Mayor and City Council hereby find and declare that the stormwater user fee is a user service fee and not a tax.

18-714. Appeal of Fees.

Any party who disagrees with the calculation of the stormwater user fee, as provided in this ordinance, may appeal such fee determination to the Union City Board of Zoning Appeals within thirty (30) days after the stormwater bill is due. Any appeal not filed within the time permitted by this section shall be deemed waived. An appeal does not relieve the payment of any stormwater user fees until decided during the appeal.

All appeals shall be filed in writing addressed to the stormwater coordinator for the City of Union City and shall state the grounds for the appeal and the amount of the stormwater user fee the appellant asserts is appropriate. The appealing party shall provide fact information and/or engineering documentation to support the basis of the appeal.

The appeal shall be placed on the agenda of the Union City Board of Zoning Appeals for a regularly scheduled meeting, within forty-five (45) days after the stormwater coordinator receives the written appeal.

The stormwater coordinator shall notify the appealing party of the date of the appeal review hearing before the Union City Board of Zoning Appeals in writing. Such written notice shall be given at least 10 days prior to the hearing by regular mail at the address provided in the written appeal document.

At the hearing, the appealing party shall be given an opportunity to present evidence, findings, and recommendations. The City shall also be allowed to present evidence, findings, and recommendations. The Union City Board of Zoning Appeals may request additional information from either the appealing party or the City.

The Union City Board of Zoning Appeals shall review the appeal and determine whether the challenged calculation is consistent with the provisions of this chapter. All appeal determinations shall be based upon a strict interpretation of this ordinance. The Union City Board of Zoning Appeals shall make a finding as to whether or not the appealing party is entitled to relief from the calculation of the user fee and make any other appropriate findings related thereto.

The decision of the Union City Board of Zoning Appeals shall be final and conclusive with no further administrative review.

Appendix A

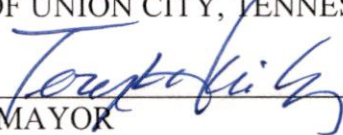
Calculating Stormwater User Fees

Single-Family Residential User Fee. The monthly fee that single family residential users within the City limits will pay will be a flat charge equal to the base rate.

Other Developed Property User Fee. The monthly fee that developed property users within the City limits will pay will be determined from the following formula:

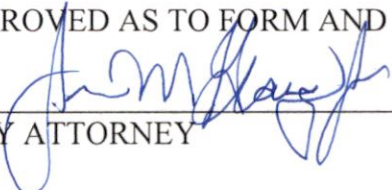
Monthly Stormwater Fee = Base Rate x $\frac{\text{Impervious Area}}{\text{ERU}}$ (Correction factor, if applicable)

SECTION 2: This Ordinance shall take effect 10 days from and after its passage on second and final reading, and after publication in the official city newspaper.

CITY OF UNION CITY, TENNESSEE
BY: 
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY

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